

MAY 18 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE GUADALUPE VALLEJO-
BONAPARTE,

Defendant - Appellant.

No. 05-50895

D.C. No. CR-05-00411-R

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John S. Rhoades, District Judge, Presiding

Submitted May 15, 2006**

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Jose Guadalupe-Vallejo Bonaparte appeals the sentence imposed following his guilty plea to attempted entry after deportation in violation of 8 U.S.C. § 1326.

Vallejo-Bonaparte contends that in light of case law subsequent to

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Almendarez-Torres v. United States, 523 U.S. 224 (1998), including *Shepard v. United States*, 544 U.S. 13 (2005), the district court violates a defendant's Fifth Amendment due process rights and Sixth Amendment right to a jury trial by finding facts, not admitted by the defendant nor found by a jury, that the defendant was convicted of a "crime of violence" or "aggravated felony" and that he was subsequently deported because of that crime.

This contention lacks merit. *See United States v. Von Brown*, 417 F.3d 1077, 1079-1080 (9th Cir. 2005) (explaining after *Shepard* that the categorization of a prior conviction as a "violent felony" or a "crime of violence" is a legal question, not a factual question coming within the purview of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Blakely v. Washington*, 542 U.S. 296 (2004), and *United States v. Booker*, 543 U.S. 220 (2005)); *United States v. Castillo-Rivera*, 244 F.3d 1020, 1024-25 (9th Cir.2001) (rejecting contention that the fact of the temporal relationship of the removal to the prior conviction is beyond the scope of Supreme Court's recidivism exception).

AFFIRMED.